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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person:
xxxxxx
Telephone Number:
xxxxxx
In Reference to:
OP:E:EP:T:2/50-06967
Date:
APR 20 1999

▷ xxxxx
xxxxx
xxxxx
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Attn: xxxxxx

Legend:

State A = xxxxxx

Plan X = xxxxxx

Plan Y = xxxxxx

Employer M = xxxxxx

Type F = xxxxxx

Districts D = xxxxxx
xxxxxx
xxxxxx
xxxxxx
xxxxxx
xxxxxx
xxxxxx

Board D = xxxxxx

Committee R = xxxxxx

Council W = xxxxxx

Dear xxxxxx:

This is in response to the ruling request dated xxxxxx, 1998, as supplemented by correspondence dated xxxxxx and xxxxxx, 1999, made on your behalf by your authorized representative regarding the Federal income tax consequences of a transfer of part of the assets of a qualified plan to a nonqualified plan.

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The facts and representations upon which the request is based are as follows:

Plan X is a defined benefit pension plan established and maintained by Employer M to provide retirement benefits for its employees. Plan X is qualified under section 401(a) of the Internal Revenue Code and its related trust is tax-exempt under section 501(a) of the Code. Plan X is a governmental plan. Plan X requires both member and Employer M contributions. Member contributions have been picked-up by Employer M since January 1, 1998.

Employer M is a subdivision of State A. Substantially all of the employees of Employer M, including Type F members who are employed by Employer M, are currently members of Plan X.

State A has by statute created Plan Y, a state-wide system, to provide retirement benefits for Type F members employed by any municipality, parish, or fire protection district within State A that has not acted to exclude its employees from Plan Y. You have represented that Plan Y is not now and does not intend in the near future to be a qualified plan within the meaning of section 401(a) of the Code. The mandatory coverage provisions of the statute do not apply to any municipality, parish or fire protection district which enacted an ordinance before January 1, 1980, exempting it from such mandatory coverage.

Employer M has had in place an ordinance that exempts it from the mandatory coverage provisions and its Type F members have participated in Plan X. Council W has expressed the view that Employer M could enjoy significant savings if all eligible Type F members employed by Employer M could be transferred to Plan Y.

The State A Statutes provide several methods by which an otherwise eligible person who is not a member of Plan Y may become a member. Section 11:2253C of the State A Statutes provides that any full-time Type F member or any person in a position as defined in the municipal fire and police service system who is employed by Districts D may, with the approval of Council W and Board D, become members of Plan Y. A reassignment of membership provided by this section is to be treated as a merger subject to approval of Committee R. You have represented that the term "merger" as used in this section does not refer to a merger or consolidation of plans as provided for in section 414(l) of

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the Code. Such a merger would be accomplished by having the transferring systems transfer funds to Plan Y.

Some Districts D members have elected with the approval of Council W to move to Plan Y. Employer M proposes to allow such transfer. Type F members whose accrued benefits are transferred from Plan X to Plan Y will no longer be allowed to participate in Plan X. It is expected that Plan X will be required to guarantee that no transferred Type F member will receive a lesser benefit after taking his or her benefit from Plan Y into account, than he or she would have received by remaining in Plan X.

Based on the above facts, the following rulings are requested:

1. The transfer of Type F members from Plan X to Plan Y and the resulting transfer of assets now held under Plan X to Plan Y will not result in current tax liabilities to the transferred members.

2. The transfer of Type F members from Plan X to Plan Y and the resulting transfer of assets now held under Plan X to Plan Y will not adversely affect the qualified status of Plan X.

Revenue Ruling 67-213, 1967-2 C.B. 149 holds, in effect, that where the interests of participants are transferred from a trust forming part of one qualified plan to a trust forming part of another qualified plan, no amounts will be considered distributed or made available to the participants; therefore, no taxable income will be recognized to them by reason of the transfer.

Revenue Ruling 55-368, 1955-1 C.B. 40 provides that the transfer of funds from one trust to another trust through the agency of the employees is not a taxable event where both trusts are qualified trust under section 401(a) of the Code.

Section 1.401-1(b) of the Income Tax Regulations provides that a pension plan within the meaning of section 401(a) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement. Similarly, Regulation section 1.401-1(a)(2) provides that a pension plan is a definite written program to provide for the livelihood of the employees or their beneficiaries after the retirement of such employees.

Revenue Ruling 74-254, 1974-1 C.B. 91 applies Regulations section 1.401-1 as cited above and concludes that a pension plan does not qualify under Code section 401(a) if it permits distributions of contributions prior to normal retirement and prior to termination of employment or termination of the plan.

Code section 402(a) provides the general rule for the taxability of a beneficiary of an employees' trust described in Code section 401(a) which is exempt from tax under Code section 501(a). Code section 402(a) read together with Code sections 402(c)(1) and (4), and 402(e)(6) provide that in order for any amount in a transfer of plan assets or for any amount in a distribution of plan assets to constitute a transaction that results in such transferred or distributed amounts not being includible in gross income for the taxable year, such amounts must be transferred or distributed from a qualified plan.

Code section 402(a) read together with Code sections 402(c)(1) and (4), and 402(e)(6) also provide, in effect, that where a transfer of assets from a qualified plan to another plan is not permissible and a distribution from the qualified plan does not constitute an "eligible rollover distribution" that assets, once removed from such qualified plan, constitute an amount actually distributed to a distributee by such qualified trust and are taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

Since no provision exists permitting a trustee to trustee transfer of assets or a tax-free rollover of a distribution from a qualified plan to a nonqualified plan, a transfer of assets from a plan qualified under section 401(a) of the Code to a nonqualified plan would constitute a taxable event under Code section 402(a).

Thus, with respect to your first ruling request, we conclude that the transfer of Type F members from Plan X to Plan Y and the resulting transfer of assets now held under Plan X to Plan Y would result in current tax liabilities to the transferred members.

Section 6.03 of Revenue Procedure 99-4, 1999-1 I.R.B. 115 provides that the national office ordinarily will not issue letter rulings on matters involving a plan's qualified status under section 401(a) of the Code. These matters are generally handled by the key district offices' determination letter program. Although the national office will not ordinarily rule on matters involving plan qualification, rulings may be issued where, among other things, the Service

determines that it is in the interest of good tax administration to provide guidance to the taxpayer with respect to such qualification issue. The second ruling request concerns the effect the proposed transfer of assets from Plan X to Plan Y would have on the continued qualified status of Plan X under section 401(a) of the Code.

You have represented that Plan X is a pension plan qualified under section 401(a). Rev. Rul. 74-254, as previously stated, provides that a pension plan does not qualify under Code section 401(a) if it permits distributions of contributions prior to normal retirement age and prior to termination of employment or termination of the plan. From the facts as submitted, it appears that none of the events listed above provide the basis for the proposed transfer of assets from Plan X to Plan Y.

Accordingly, with respect to your second ruling request, we conclude that the proposed transfer of Type F members from Plan X to Plan Y and the resulting transfer of assets now held under Plan X to Plan Y would adversely affect the qualified status of Plan X under section 401(a).

A copy of this ruling is being sent to your authorized representative pursuant to a power of attorney on file in this office.

Sincerely,

(signed) JOYCE E. FLOYD
Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

Enclosures:
Deleted copy of ruling
Notice of Intention to Disclose

cc:
Division Director
xxxxxx Key District
Attn: Chief, EP/EO